

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 166 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATUBHAI CHANDUBHAI DHOBI

Versus

KOKILABEN D/O CHANDUBHAI MOTIBHAI DHOBI

Appearance:

MR DHIRENDRA MEHTA for Petitioners

MR RAJESH K SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/03/99

ORAL JUDGEMENT

In this Revision Application under section 115 of the CPC the petitioners-original defendants challenge the order dated 28-12-1998 passed by the learned Civil Judge (S.D.) Anand, rejecting Application Ex.37 in a suit which was previously numbered as Special Civil Suit No.8/89 and now re-numbered as Regular Civil Suit No. 453 of 1998.

2. The respondents-original plaintiffs filed the present suit for recovering a sum of Rs.33,000/- with interest and costs from the petitioners in the year 1989. The suit was instituted in the Court of the Civil Judge (Senior Division) and it was also numbered as a Special Civil Suit. In the year 1993 the Bombay Civil Courts Act came to be amended and the pecuniary jurisdiction of the Civil Court (Junior Division) was raised from Rs.20,000 to Rs.50,000. The petitioners filed the present application on 17-9-1998 contending that the suit was required to be numbered as a Regular Civil Suit and transferred to the Court of the learned Civil Judge (Junior Division) as the valuation of the suit was less than Rs.50,000 and therefore, the Court of the Civil Judge (Senior Division) [has no jurisdiction to try the suit. The application came to be partly allowed and partly rejected by the learned Civil Judge (Senior Division) Anand, by directing that the suit be registered as a Regular Civil Suit but then holding that even after the suit is renumbered as Regular Civil Suit instead of Special Civil Suit the Court of the Civil Judge (S.D.) will continue to have jurisdiction to try the suit. It is against the aforesaid order that the present Civil Revision Application is filed by the petitioners.

3. At the hearing of this Civil Revision Application Mr.Mehta,learned Counsel for the petitioners has submitted that Section 6 of the Amending Act itself provided that all suits and proceedings of a civil nature wherein the subject matter exceeds in amount or value twenty thousand rupees but does not exceed fifty thousand rupees, pending in a Court of Civil Judge (S.D.) immediately before the commencement of the Bombay Civil Courts (Gujarat Amendment) Act, shall after such commencement (i.e. w.e.f. 1-11-1993) stand transferred to and be disposed of by a Civil Judge (J.D.) within the local limits of his ordinary jurisdiction. It is therefore, vehemently submitted by Mr.Mehta that in view of the aforesaid statutory provision the Civil Judge (Senior Division) does not have jurisdiction to try such suits.

4. On the other hand Mr. Shah learned Counsel for the respondents has submitted that even after the amendment the Civil Judge (Senior Division) was not deprived of his jurisdiction as defined by Section 24 of the Bombay Civil Courts Act, 1869 (hereinafter referred to as the Act) since there is no lower or higher pecuniary limits attached to the jurisdiction of the Civil Judge (Senior Division) and therefore, the Civil

Judge (S.D.) Anand has jurisdiction to try the suit in question.

5. Having heard the learned Counsel for the parties, this Court is of the view that no interference with the order passed by the learned Civil Judge (S.D.) Anand is called for, as there is considerable substance in the argument of the learned Counsel for the respondents. Section 24 of the Bombay Civil Courts Act 1898 reads as under:

" 24. Classes of Civil Judge - The Civil Judges shall be of two classes.

Jurisdiction of Civil Judge (Senior Division).

The jurisdiction of a Civil Judge (Senior Division) extends to all original suits and proceedings of a civil nature.

Jurisdiction of a Civil Judge (Junior Division):

The jurisdiction of a Civil Judge (Junior Division extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value fifty thousand rupees."

(The words "fifty thousand rupees" were substituted for the words " twenty thousand rupees " by the Amendment Act, 1993)

There is no pecuniary limit attached to the jurisdiction of the Civil Judge (Senior Division) . The jurisdiction of the Civil Judge, (Senior Division) extends to all original suits and proceedings of a civil nature. It is only in case of the Civil Judge (Junior Division) that his jurisdiction is circumscribed within the pecuniary limit upto fifty thousand rupees. Hence the trial of the suit where the value of the subject matter of the suit is less than fifty thousand rupees, by the Civil Judge (S.D.) cannot be said to be without jurisdiction. In view of the aforesaid clear statutory language of the

Section 24 of the Act there is no manner of doubt that the Court of Civil Judge (Senior Division) does have jurisdiction to try a suit where the value of the subject matter is less than fifty thousand rupees.

6. Moreover, the learned Joint Civil Judge (S.D.), Anand has observed that he was bound to proceed with the case assigned to his Court as per the order dated 15-7-1993 of the learned District Judge and that it was not for him to decide whether the case is to be assigned to the Civil Judge (Junior Division) or not. He was only concerned with the question whether his Court i.e. the Court of the Civil Judge (S.D.) has jurisdiction to decide the case or not. The learned Judge further observed in para 5 of his order that " this Court is also empowered to try such suit even if it is re-numbered as Regular Civil Suit, as the local jurisdiction is also with this Court and the present Court as well as the Court of the Joint Civil Judge of Junior Division are joined with the Court of the Civil Judge (SD) (Main)."

7. Apropos the contention of the petitioners that there is automatic transfer of all such suits from the Court of the Civil Judge (S.D.) to the Court of the Civil Judge (J.D.), it is required to be noted that in the case of Rathod Bhojaji Vs. Pathan Nasirkhan, 3 GLR 803 and also in the case of C.C.Basu Vs. Patel Dahyabhai Vaghjibhai & Ors. 8 GLR 123 this Court has held that a Joint Civil Judge, either Senior Division or Junior Division, can only dispose of such matters as are referred to him either by the principal Judge of the Court to which he is joint or by the District Judge of the District in which such Court is situate.

While making such assignment of the case, of course the District Judge is required to keep in mind that the case is not to be transferred to a Court not having territorial jurisdiction, pecuniary jurisdiction and the inherent jurisdiction to try the suit in question. Hence, it is within the jurisdiction of the District Judge to assign a suit with valuation of less than Rs.50,000/- to the Court of the Civil Judge (Senior Division) or to continue such suits with the Court of the Civil Judge (Senior Division) depending upon the work load with the concerned Courts. On the same principle it is also open to the learned District Judge to transfer suits with the value of less than Rs.50,000/- to the Court of the Civil Judge (Senior Division). This power

of the District Judge as the administrative head of the District Judiciary is not whittled down by the provisions of the Section 15 of the Code of the Civil Procedure which merely provide that every suit shall be instituted in the Court of the lowest grade competent to try it.

8. Even if there were any substance in the argument that in view of Section 15 of the CPC and in view of the Amendment Act there would be automatic transfer of the suit to the Court of the Civil Judge (J.D.) , in view of the aforesaid finding that the learned Civil Judge (S.D.) Anand, does have jurisdiction to try the suit in question no interference is called for with the order passed by the learned Joint Civil Judge (S.D.) Anand, in exercise of the discretionary power of this Court under Sec. 115 of the CPC, particularly when the suit is pending since 1989 and in spite of the amendment having come into force in November 1993, the application in question (Ex.37) was moved by the defendant in September 1998.

9. This Civil Revision Application is therefore, dismissed. Notice is discharged.

Since the suit is pending since 1989, the trial Court shall try and decide the suit (renumbered as Reg.Civil Suit No. 453 of 1998) as expeditiously as possible and in any case within six months from the date of receipt of the writ of this Court.